IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.2600 OF 2005

IN

SUIT NO.722 OF 2005

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Mantri Real Estate Pvt.Ltd. ...Plaintiff

v/s.

Champaklal Jani & ors. ...Defendants

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Mr.Uday P. Warunjikar i/b Ms.S.G.Naik for the Plaintiff.

Ms.Alphana Ghone i/b Pandya & Co. for Defendants Nos. 1 & 2.

Mr.B.B.Saraf i/b DSK Legal for Defendant No.12.

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CORAM: D.K.DESHMUKH, J.

DATED: 29TH JUNE, 2007

P.C.:

1. This Notice of Motion is taken out by the Plaintiff. The Plaintiff has filed this suit for a decree of specific performance of Memorandum of Understanding dated 10th September, 2000. Perusal of the Memorandum of Understanding shows that it was entered into with the owner of the land. It appears that the property is fully occupied by the tenants. After the owner gets the tenants to vacate the property, the property was to be developed and constructed by the Plaintiff at his own expenses and the flats constructed on the land were to be sold. The Plaintiff was to deduct the expenditure incurred by him and some additional amount and the remaining balance amount was to be treated as profit and it was to be shared by the parties in the ratio mentioned in the agreement.

2. Now, essentially this is an agreement for development or an agreement to carry on a joint venture. Therefore, in view of the judgment of the Division Bench of this court in the case of Chheda Housing Development Corporation v/s, Bibijan Shaikh Farid and ors, decided on 15-2-2007 it cannot be said that the Plaintiff has a prima facie strong case for getting the decree of specific performance of an

agreement of such nature.

3. The learned Counsel appearing for the Plaintiff urged relying on some clauses in the agreement that because the owner permitted the Plaintiff to enter upon the land for doing soil testing and other things, the Plaintiff is in possession of the land and therefore, this court should protect the possession of the Plaintiff. It appears that there is a specific clause in the agreement as to when the possession is to be given by the owner to the Plaintiff. That clause is clause 3 of the Memorandum and it contemplates the owner delivering vacant possession to the Plaintiff after the tenants vacate the property. Admittedly, tenants have not vacated the property. Therefore, there is no question of the Plaintiff being in possession. At the most it can be said that the owner permitted the Plaintiff to enter the property to do certain act. That will not amount to the Plaintiff being in possession of the property. As the Plaintiff does not appear to have a prima facie case for getting a decree of specific performance, in my opinion, the Plaintiff is not entitled to any interim order. Notice of Motion is, therefore, dismissed.

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